

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

THOMAS S. SMITH,)	
)	
Plaintiff)	
)	
vs.)	CASE NO. CV92-Z-1234-S
)	
COLLINS CONSTRUCTION CO., INC.,)	
et al,)	
)	
Defendants)	
ELIZABETH D. SMITH,)	
)	
Plaintiff)	
)	
vs.)	CASE NO. CV92-Z-1235-S
)	
COLLINS CONSTRUCTION CO., INC.,)	
et al,)	
)	
Defendants)	

PRETRIAL ORDER

A pretrial conference was held in the above cases on January 7, 1993, wherein, or as a result of which, the following proceedings were held and action taken:

1. **Appearances.** Appearing at the conference were:

[Leave space for completion by the court]

2. **Jurisdiction and Venue.** Subject matter jurisdiction exists under 28 U.S.C. § 1332 by reason of the amounts in controversy and the admitted diversity of citizenship. Personal jurisdiction and venue are not contested.

3. **Consolidation.** These actions (CV92-Z-1234-S and CV92-Z-1235-S) involve common questions of law and fact and are hereby **ORDERED** consolidated under Rule 42 for further proceedings and trial.

4. **Parties and Trial Counsel.** Any fictitious defendants are deleted. The parties before the court are correctly named as set out below, and the designated trial counsel for the parties are set out below.

	<u>Parties</u>	<u>Trial Counsel</u>
Plaintiffs:	Thomas S. Smith	Robert Stephens (Brown, Brownlee & Stephens)
		Gene Baird (Baird & Jones)
	Elizabeth D. Smith	Same counsel
Defendants:	Collins Construction Co., Inc.	James Johnson & Robert Donovan (Phillips & Randall)
	James K. Adams	Same counsel

5. **Pleadings.** The following pleadings (with the modifications contained in this order) have been allowed: complaint, as amended September 5, 1992, on behalf of each plaintiff; answer on behalf of defendants to each complaint. The answers filed to the original complaints suffice as answers to the amended complaints without refiling.

6. **Statement of Case.**

(a) Agreed Summary. This case arises out of a collision between two vehicles which occurred Friday afternoon, August 5, 1991, at the intersection of 21st Street and 5th Avenue South in the city limits of Birmingham, Alabama. An automobile owned and then being operated by plaintiff Thomas S. Smith (and in which his wife, plaintiff Elizabeth D. Smith, was a passenger) was proceeding northward on 21st Street (a one-way street for northbound traffic). A truck owned by defendant Collins Construction Co., Inc., and then being operated by the other defendant, James K. Adams, was proceeding eastward on 5th Avenue South (two-way traffic). A standard traffic control device (green/yellow/red lights) governed traffic entering the intersection and was functioning on this occasion. Both drivers claim to have had the green light. The corporate defendant admits that Adams was its employee and was acting within the line and scope of such employment at the time.

(b) Plaintiffs' Positions. Plaintiff Thomas Smith seeks \$75,000.00 in compensatory damages for his own personal injuries, medical expenses and lost wages; for property damage to his automobile; and for his wife's medical expenses, past and future and the loss of her services and consortium, past and future. Plaintiff Elizabeth Smith seeks \$125,000.00 in compensatory damages for her personal injuries and disfigurement. Plaintiffs claim that these damages were proximately caused by the negligence of the defendants, asserting that Adams was negligent in (1) violating *Alabama Code* § 32-5A-31 (running yellow or red light) and/or (2) failing to exercise ordinary care under the circumstances. Plaintiffs withdraw any contention of wanton misconduct on the part of the defendants. Plaintiff Thomas Smith denies any contributory negligence on his part.

(c) Defendants' Positions. Defendants deny any negligence on the part of Adams and contest the amount of damages claimed by plaintiffs. As to the claims made by plaintiff Thomas Smith, defendants assert that Smith was himself contributorily negligent by (1) violating *Alabama Code* § 32-5A-31 and/or (2) failing to exercise ordinary care under the circumstances. Defendants withdraw any contention of contributory negligence on the part of plaintiff Elizabeth Smith.

7. **Discovery and Other Pretrial Procedures.**

(a) _____ Pursuant to previously entered orders of the court, discovery is closed.

_____ The parties are given leave to proceed with further discovery provided it is commenced in time to be completed by _____.

(b) Pending motions:

[Here list such motions, if any, with space for the court's ruling]

*8. **Jury Trial.** Five (5) days prior to the scheduled trial, the parties shall present to the court any special questions or topics for voir dire examination of the jury venire and, to the extent the same can be anticipated, any requests for instructions to the jury (including extracts of any statutes on which instructions are requested).

[Leave about 6 lines for possible additions by the court]

9. **Trial Date.** This case will be ready for trial by _____ or after a date as set by the court.

ORDERED this _____ day of _____, 2005, that the above provisions be binding on all parties unless modified by further order for good cause shown.

HARWELL G. DAVIS, III
UNITED STATES MAGISTRATE JUDGE

**** For non-jury case, the following should be substituted for paragraph 8:***

8. Statement of Agreed and Disputed Facts.

(a) By _____ plaintiff's counsel shall submit to defendant's counsel a statement setting forth the principal facts proposed to be proven by plaintiff in support of plaintiff's claims as to liability and damages.

(b) By _____ defendant's counsel shall return the statement to plaintiff's counsel, indicating thereon those factual contentions of the plaintiff with which they disagree and adding thereto those additional facts proposed to be proved by the defendant.

(c) By _____ plaintiff's counsel shall indicate thereon those factual contentions of the defendant with which plaintiff disagrees and shall file the modified statement, serving a copy thereof on opposing counsel. While it is not necessary for plaintiff's counsel to retype the final product, it may be helpful in many cases for this to be done before filing. If retyped, it is preferable to have all agreed facts, regardless of by whom proposed, collected under one heading and to have the respective additional facts proposed by the parties, which facts are in dispute, collected under separate headings.

(d) In stating facts proposed to be proved, counsel shall do so in simple, declarative, consecutively numbered sentences, avoiding "color words," labels, and legal conclusions. In indicating disagreement with a proposed fact, counsel shall do so by deletion or interlineation of particular words and phrases so that the nature of the disagreement will be clear. Objections to the admissibility of a proposed fact (whether as irrelevant or on other grounds) may be made at trial and, without court order, may not be used to avoid indicating agreement or disagreement with the truth of the proposed fact.